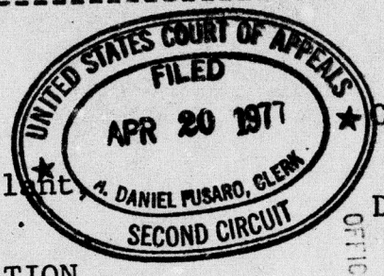
United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

77-7050

UNITED STATES COURT OF APPEALS



ELEANOR KRAMER,

Plaintiff-Appellant,

v.

BOARD OF EDUCATION, COMMUNITY EDUCATION (CENTER DISTRICT #7), STATE URBAN EDUCATION, SOMPSEC,

Defendant-Appellee.

CIVIL APPEAL

Docket No. 77-7050

OFFICE OF CORP. COUNSEL
77 APR 20 P2:41
LAW DEPARTMENT
CITY OF NEW YORK

BRIEF

B P/5

I. An appeal from an order granting summary judgment to the defendant on July 28, 1976 and entered on September 17, 1976.

II. In June of 1970, I, Eleanor Krammer, along with Barbara Rodgers, and Zobeida Pascal, along with several other female teachers, four others of which were white, one of which were black, were laid off from employment in School District #7 in the South Bronx.

a. We originally went before the Human Rights Administration and filed a complaint of racial discrimination by the Boards of the local agencies and the Board of Education in School District #7 in the South Bronx.

b. Their discriminatory practice was to give jobs to the minority complement of the existing staff, who at that time lacked seniority and decent attendance records. (re: original complaint at the New York State Human Rights Administration) (1.)

c. A negative decision against the complainants by the Human Rights Administration caused us to file an appeal at the same agency. The ensuing decision was in favor of the complainants via the following arguments:

The Appeal Board decision of the Human Rights Administration on May 19, 1971 stated (their page 1) (2.) "having considered

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the said brief and the arguments of the parties and having decided that the determination and order of the State Division of Human Rights in dismissing the complaint of the complainants appellant was arbituary and capricious" (2a) (on page 3) appellants counsel also claims that the appellants were of equal character to the dance teachers retained and that respondants chose appellants and the other three females to be discharged to effect a desired racial balance." (2b) (continued on the same page) Respondant Peters, at the conference held by the Division of Human Rights on December 15, 1970, is reported to have said that the verbal directives of the respondant Community School Board were to hire in accordance with the pupils ethnic backgrounds and Respondant Matthew hired and fired following the ideas of the Board. (continued on the same page) investigation should also be made to the claimed so called gentlemen's agreement with a view to learning whether there was, in fact, such a policy or an understanding on the part of the respondants, of any of them, that the five dance teachers retained, match or parellel the ethnic and racial make-up in the community. Investigation should also be made concerning the methods of respondants for employment, retention, and discharge of dance teachers and whether the same procedures were followed with respect to the eleven members of the original group of dance teachers." (2c) (continued on page 4) If, however, it should be found that appellants dismissals were motivated by discrimination because of race or sex this would con-

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stitute an unlawful discriminatory practice under the State Human Rights Law, even though the appellants have no tenure, under the said regulation."

At this time, the local agencies requested resumes from the three complainants and we responded that they might refer to the resumes they already had on file from several different occasions and requests by themselves and the different Boards. We never heard from them again and we understood that subsequent to this, other teachers were rehired, who were not complainants who still did not have the seniority of the three complainants.

d. It was quite sometime until we heard from the Human Rights Administration again. After a telephone call to the Human Rights Commission as to the status of our case, I, (3) Eleanor Kramer, received a letter on October 20, 1971, by the Director of the New York City Downstate Operations, that a search had to be made to find out where my case was. During the initial hearings at the Human Rights Administration, other minutes of previous hearings were also lost. (refer to copy of letter of that date, (4) also refer to copy of press release of January 20, 1972 (5) regarding the same status that had still not been completed)

e. The following decision by the Human Rights Administration was again negative to the complainants without, to my knowledge, any further hearings or investigations as directed by the Appeal Board. I was in contact with Jose Rodriquez, Director, Commun. Educ. Ctr. Dist. #7 and the Board of Education on several occasions, before and after the date of March 24, 1972 regarding possible re-employment and/or

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relocation of same.

During the course of hearings and appeal at the State Human Rights Commission (HRC), vacancies continued to exist. At some point in time, none of the plaintiffs were recalled (myself, Barbara Rogers, and Zobeida Pasqual); but it is my understanding that one Teresita La Tana was recalled back to S.O.M.P.S.E.C. to teach. All of us, plaintiffs, had seniority over Ms. La Tana.

It is also my understanding that Ms. Carman Estrada was reemployed by relocation to another school district. Upon my quieries into this possibility, at that time, the Board of Education insisted on additional credentials, i.e., a college degree. To my knowledge, Ms. Estrada did not have one.

At one point, Mr. Rodríguez referred me to the South Bronx Action Theatre, also funded by the Community Education Center, as was S.O.M.P.S.E.C. and also within School District #7 in the South Bronx. Responding at an appointed time with a Mr. Fred Daris, the Director, I found that Mr. Daris was not in and could obtain no further information. Subsequently, I learned that a Ms. Peligena Rogers was employed by the South Bronx Action Theatre, and through their auspices was teaching at P.S. 27, the school that I had taught at for two years, while employed at S.O.M.P.S.E.C. whose principal and vice-principal had requested my return, but could not be accomodated because of my no longer being affiliated with the sponsoring organization, S.O.M.P.S.E.C.

The Board of Education would not consider relocating me for lack of credentials, and because they "had no openings". Subsequent, to this, I requested active status in their files

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should an opening arise. When hearing of exams, (they never informed me of openings when they occurred) I would apply, only to be told that I missed the application deadline dates. I would like the Court to be advised that I had a Certificate of Competency from the Board of Education and that this credential was all that was required to teach for the four years I was employed at S.O.M.P.S.E.O.

To comply with the Board of Educations request for further credentials before they would relocate me, I took the College Board Exams and entered Brooklyn College in September of 1972, because they still refused to rehire me. It is a fact, that the certificate of competency already awarded to me by the Board of Education should sustain my professional status, and that their list entries, would constitute a basis for constant re-examination for attainment of the professional status that I already had, and, therefore, constitutes retaliatory discrimination; as a certified teacher I should not be subjected to recertification with each change of job or relocation. I do not believe that this practice exists with anyone else to this date. After the original layoff of employment, I went down to the State Unemployment Insurance Office and was told that I was not eligible to collect Unemployment Insurance. However, they sent me down to the State Employment Office, the Professional Division, where teachers were placed. The Counselor at that office told me that they could not even place me through the Board of Education without a full certified degree and that I should at least enter college to show that I was after these credentials. When I entered College, again I was in constant

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touch with School District #7 for any further possibilities. It was, of course, difficult for me to be in direct touch with the individuals involved, as telephone calls were never returned and my calls were always answered by clerical staff only.

Enclosed are documents dated 1971 (6.), early 1972 (7.), late 1972 (8.) and 1973 (9.) and a copy of a letter (10.), also mailed to the Corporation Counsel very recently, whereby I had reason and occasion to contact both the Board of Education and Mr. Rodriguez regarding possible employment. Though not directly relevant, ~~it~~ they illustrate my activity in educational programs which prompted my continual efforts at retaining professional status in my field and sustained interest in my candidacy for employment. On these occasions, I sent newspaper articles, clippings, resumes, printed brochures, hoping for further response. In fact, in June of 1972, a Ms. Trudy Aybar, working at a school district through the Board of Education met me in the lobby of the Board of Education in Brooklyn where I tried to obtain employment in their Saturday Cultural Arts Program. While there, I again stopped at the Personnel counter at the main building a block away, where the clerks refused me any advance information of openings, but told me I would have to wait for list openings. They also told me I would have to keep checking on their bulletin board. But as related before, this was no guarantee that I would see the notice "on time" or before the deadline date. I could not realistically visit this Board every day.

f. I was lead to understand that these facts and documents were never brought to the attention of Judge Tenney until after he arrived at his final decision. I was lead to

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believe that a member of his staff felt that they were three days too late in arriving. (please refer to my two letters to Judge Tenney dated September 21, 1976, and October 4, 1976, asking that this letter supercede the letter of September 21 because of my original misinterpretation of what Judge Tenney requested) With Judge Tenney's final judgment entered on September 19, 1972, he had given me 20 days to present additional facts. The letter of September 21, 1976, was within that time. The letter of October 4th was only thirteen days after I had first heard of the decision in the mail; that is seven days less than the 20 days when I first heard about this. (please refer to the pro se clerk's letter giving me 10 days instead of the original 20 days that Judge Tenney had awarded me). (note: losses of files becoming thematic.)

V. The specific reason for Judge Tenney's dismissal was that I had failed to show racial discrimination; but, in fact, I did continue to seek employment; that I constantly tried to contact the involved parties; that I constantly made inquires for employment with the Board of Education and Local School Board #7, that I called them before I went to the Equal Employment Opportunity Commission of the Federal Government on October 3, 1972 to file the same complaint after it was dismissed from the State Agency. (please refer to the copy of that letter regarding the official complaint with the EEOC) Please note that this letter postdates March 24, 1972, the date in which municipal employees were finally covered as equal citizens by enactment of law by the Congress of the United States., eight years after the Civil Rights Act of 1964 when other employees were covered. May I repeat, to the Court, to stress the fact that Hispanic teachers were rehired

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who lacked the seniority that I did and that I was never recalled despite my qualifications and undisputed abilities. These facts with the evidence of the copies of the different documents and letters, I believe, were never brought to Judge Tenney's attention because someone on his staff decided that they were late and that they did enough for me. I must argue that these facts do sustain my actions of my seeking employment beyond the date of March 24, 1972 and that I was rejected for discriminatory and retaliatory reasons.,, and,,, ... How does the Court justify the total rejection of arguing the Equal Protection under the 14th amendment for the sake of the Civil Rights Law covering different groups in 1964 and other groups in 1972? Eight years later. Eight years after the civil rights law of 1964 correcting Civil Discrimination for 200 years and not covering eight years on a equal basis to other citizens. VI. The Corporation Counsel of the City of New York, Agents for the Defendants, have only served to deny any complaints on my part rather than ever investigate any conciliatory acts or other possibilities. This is even after Judge Tenney, in his motion denying my complaint and granting the summary judgment for the defendants, did state in that decision, that he did recognize, in fact, that these discriminatory acts did take place.

a. A letter to the Board of Education dated September, 1976 (see) 10. (as attached)is to this date still not answered. The Corporation Counsel, in response to a copy of this letter that I sent to the Board of Education, talks about the disasterous economic conditions that prevail with the Board of Education and therefore, cannot constitute a retaliatory act against me regarding any possible employment. (16.) However, there is no mention of the fact that were

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I not discriminated against in 1970, the tenure that I would have now, in 1977, would obviously gaurantee me a continued status of employment, because of that long period of time, rather than being a new employee in danger of layoffs, now.

It is beyond my understanding of anything I've learned to understand, as to why not one conciliatory step in settling (17.) this issue was ever made. Any efforts, I made, in addition to the above, was ignored with a carelessness, rudeness, hostility, a run-around, and continually biased attitudes. If the court expected me to do more, than I am being asked to endure insult on top of injury, and what would be intolerable to most human beings.

This whole traumatic procedure has left me demoralized, debilitated, and possibly defeated. I had to follow through the Marshall's office when they didn't fulfill their service duties. The Pro Se office overlooked a defendant, and the forms to assist me in obtaining Counsel. The energy I had to exert to compensate for perhaps honest errors was too demanding, and I just have no more fight left, As the emotional cost to me is just too high. ~~I will concede defeat~~ STET: ~~should this decision not be in my favor or prolonged any further; and the system (of justice?) emptier....~~

In conclusion, I wish to argue that the Board of Education, in not coping with the initial act of discrimination, has prolonged and sustained their failure in acting responsibly and thus, endorsed the biased action and behavior of the other defendants; and that, the Federal legislature, in failing to recognize all citizens with the Civil Rights Act in 1964, and not

awarding this protection until eight years later, failed miserably in their obligation to Constitutional principles; and that same eight years is not in excess of the approximately 200 years that Affirmative Action is supposed to make me, and others like me, pay a heavy cost, resulting in unconstitutional and human error; and that, the Court, in allowing its hands to be tied in this respect, becomes an additional weight of affliction. I fought for Civil Rights before it was popular, and I don't have enough fight left for myself. That this situation continues, and unofficially can continue for lack of any higher power or authority, is a fact. It is happening to me and many others in education, employment, and personal expression through a new kind of fear. That the Corporation Counsel as a Civil Servant, can unethically defend an obvious wrong, because a badly enacted law allows them to do so, leaves me with my back to the wall. And the end result is, in fact, that there is no equal opportunity, legally, or in practice, out there now, or if the Court allows, ever.

April 20, 1977 Eleanor Kramer